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REGULATORY AUTH.
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OFFICE OF THE
EXECUTIVE SECRETARY

BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSEE

IN RE:

**SHOW CAUSE PROCEEDING
AGAINST TALK.COM, INC.**

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**DOCKET NO.
01-00216**

**MEMORANDUM IN SUPPORT OF
MOTION TO EXCEED DISCOVERY LIMITATION**

The Consumer Services Division of the Tennessee Regulatory Authority in the above-captioned case hereby requests that it be permitted to file discovery requests in an amount exceeding the limitations for discovery requests set forth in Tenn. Comp. R. & Reg. 1220-1-2-.11, to the extent that the Pre-Hearing Officer deems the Requests for Admissions filed on January 7, 2002 to constitute discovery requests within the meaning of such Regulation.

Tenn. Comp. R. & Reg. 1220-1-2-.11 states that no party shall serve more than forty (40) discovery requests without first having obtained leave. The Consumer Services Division will file no more than forty (40) Requests for Production and Interrogatories in this action. The Consumer Services Division, however, seeks to file, in addition, a number of Requests for Admission, due to the number of complainants involved and the fact-intensive nature of this docket.

If Requests for Admission are considered discovery requests, an exception to Tenn. Comp. R. & Reg. 1220-1-2-.11 should be permitted in this case due to the number of allegations and complainants. The *Order Requiring Talk.com to Appear and Show Cause Why a Cease and Desist Order and/or Fine Should Not be Imposed* contains more than one hundred forty-nine (149) counts and contains factual allegations regarding more than one hundred (100) persons

and/or incidents of improper conduct. In order to eliminate undisputed matters and narrow the issues, the Consumer Services Division hereby requests permission to file, in addition to its Requests for Production and Interrogatories, three hundred and eleven (311) Requests for Admission (attached hereto).

Requests for admissions should be treated differently in this matter from interrogatories and requests for production because their purpose and effect are different. Unlike responses to other discovery procedures which are evidentiary and are obtained for the purpose of introduction at trial and are subject to contradiction at trial, an admission, unless it is allowed to be withdrawn or amended, concludes the matter and avoids any need for proof at trial.¹ Requests for Admissions primarily involve the elimination of undisputed matters, rather than the ascertainment of facts.² Admissions were designed to reduce trial time by limiting and narrowing the issues.³

Although the Consumer Services Division does not bear the burden of proof in this Show Cause Proceeding, it seeks leave to file the above mentioned Requests for Admissions in order to simplify the evidentiary record and expedite matters, particularly during the Hearing. Tenn. Code Ann. § 65-2-106. Allowing the Authority to serve the attached Requests for Admissions

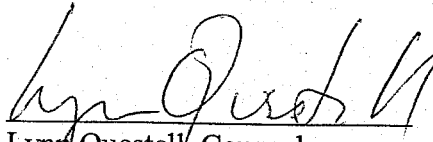
¹ *Tennessee Department of Human Services v. J.B. Barbee*, 714 S.W.2d, 263,266 (Tenn. July 21,1986).

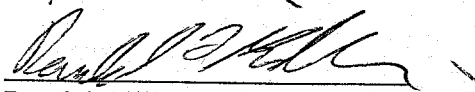
² *Tennessee Department of Human Services v. J.B. Barbee*, 714 S.W.2d, 263,266 (Tenn. July 21,1986).

³ *Id.*

will avoid the time and expense of adducing proof on conceded issues⁴ and is therefore proper in this matter.

Respectfully submitted,


Lynn Questell, Counsel


Randal Gilliam, Counsel

⁴ *Id.* at 267.